Tetuan Azim, Tunku Farik & Wong v Tetuan Ong Partnership

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL W-02(A)-137–01 OF 2020
LAU BEE LAN, RAVINTHRAN AND MOHD SOFIAN JJCA
11 SEPTEMBER 2021

Civil Procedure — Bill of costs — Taxation — Law firm ('plaintiff') was cited as third party in civil suit — Insurer for plaintiff's lawyers appointed lawyer in another firm ('defendant') to defend plaintiff in suit — Following amicable settlement of suit defendant submitted bill of costs for handling matter to insurer which paid bill without objection and sent same to plaintiff for reimbursement — Plaintiff refused to reimburse on ground bill amount was excessive and unreasonable — Plaintiff applied to High Court to tax bill under s 126 of Legal Profession Act 1976 almost one year after receiving it — Whether plaintiff had right to petition for taxation when it was not the party which appointed defendant — Whether High Court was wrong in allowing bill to be taxed — Whether bill was excessive or unreasonable or devoid of details and explanation of work done — Whether plaintiff breached six-month limitation period in obtaining order for taxation of bill — Whether plaintiff had shown special circumstances to allow court to enlarge time for bill to be taxed

When the respondent law firm was added as a third party to a civil suit, it notified the insurer providing professional indemnity insurance to its lawyers about the proceedings. The insurer appointed a lawyer, Wong Hok Mun ('Wong'), in the appellant law firm to defend the respondent. The parties to the suit negotiated for a settlement and after more than a year they recorded a consent judgment. During the negotiations period, the appellant's counsel had attended 11 case management hearings of the matter in court. The appellant raised a bill of costs amounting to RM13,684.60 for defending the respondent and sent the same to the insurer for payment. The insurer settled the bill without objection and then sent the bill to the respondent for a reimbursement since under the certificate of insurance the respondent had to bear all costs up to the limit of RM50,000 before the insurer's obligation to indemnify the respondent for loss under the policy arose. The respondent refused to reimburse the bill amount on the ground it was 'excessive, exorbitant and unreasonable'. After almost a year since receiving the bill, the respondent applied to the High Court to tax the bill under s 126 of the Legal Profession Act 1976 ('the LPA'). The High Court allowed the application holding that although under s 126 an order for taxation should be obtained within six months of delivery of the bill, the respondent had shown special circumstances for the time to be enlarged, namely: (a) the bill was for a lump sum and did not provide details; and (b) the bill amount was excessive and unreasonable. In the

instant appeal, the appellant argued that the High Court erred in allowing the bill to be taxed because: (i) the respondent had no right to petition for the taxation because it was the insurer, and not the respondent, which appointed the appellant and therefore the insurer was party 'chargeable' under s 126 of the LPA; (ii) the application to tax the bill was, in any event, time-barred under s 128 of the LPA; and (iii) no special circumstances were shown why time should be enlarged for the bill to be taxed.

Held, unanimously allowing the appeal and setting aside the High Court's decision:

(1) Although the insurer was the party 'chargeable' with the bill of costs under s 126 of the LPA — since it was the one which appointed and instructed the appellant — the respondent was the party 'liable to pay the costs' to the party chargeable in s 126 and therefore the respondent was entitled to petition for the bill to be taxed. Under the certificate of insurance, the insurer was only obliged to indemnify the respondent for a loss after the limit of the 'Base Excess' of RM50,000 was exhausted. Since the bill amount was well below the said limit, the respondent was obliged to reimburse the insurer the sum of RM13,684.60 it had paid the appellant (see paras 8–9).

(2) Under s 126 of the LPA, an order for taxation of costs must be 'obtained' within six months of delivery of the bill of costs by the party chargeable or by any person liable to pay the costs. Lawyer Wong in the appellant firm delivered his bill of costs to the insurer on 19 December 2017. The insurer forwarded the bill to the respondent on 30 January 2018. The respondent applied to tax the bill only on 12 December 2018. There was thus a delay of six months. The limitation period in s 126 ran from the time the bill was delivered to the insurer on 19 December 2017 because under s 126 the advocate was only obliged to deliver the bill to the party 'chargeable', ie, the insurer. There was no reference to 'delivery' of the bill from the party chargeable to the party 'liable to pay the costs' (the respondent); nor any stipulation that the limitation period only ran from the time the bill of costs was received by a party liable to pay the costs. Whether the limitation period commenced from the time the insurer demanded payment from the respondent (as contended by the respondent) or from the time the bill of costs was delivered by the advocate to the insurer, there was a delay in applying for the order for taxation (see paras 13 & 16–18).

(3) This was not a case where a lump sum fee was asked for without details or explanation. An explanation and details were given in the bill of costs — in the 'Schedule of Work Done' at the bottom of the bill — that were not considered by the High Court judge. The bill amount was not unreasonable, exorbitant or oppressively excessive. Although the suit was

pending settlement for over a year, the appellant's lawyer had to attend 11 case management hearings during that time. Therefore, merely because the appellant was asked by the respondent to 'stand down' pending the outcome of the settlement negotiations, the suggestion that no legal work was required to be done was not tenable (see paras 27–28).

(4) The High Court judge had failed to consider the respondent's email instructing the appellant not to settle the matter unless RM30,000 in costs was paid by the defendant in the civil suit in question. Since the respondent had considered RM30,000 as reasonable party-and-party costs for defending the third-party action — and such costs were generally lower than solicitor-client costs — it was difficult to accept the respondent's subsequent argument that the appellant's solicitor-client bill for RM13,648.60 was exorbitant and excessive in a suit which involved a sum of RM1,116,754.80 (see para 29).

(5) The respondent had breached the six-month limitation period in obtaining the order for taxation and the High Court was wrong in finding that the respondent had shown 'special circumstances' under s 128 of the LPA for time to be enlarged to tax the bill (see para 30).

[Bahasa Malaysia summary

Apabila firma guaman responden telah dimasukkan sebagai pihak ketiga kepada satu tindakan sivil, ia memaklumkan kepada pemberi insurans yang menyediakan insurans indemniti profesional kepada peguamnya berkenaan prosiding tersebut. Pemberi insurans telah melantik seorang peguam, Wong Hok Mun ('Wong'), di firma guaman perayu untuk membela responden. Pihak-pihak dalam tindakan tersebut berunding untuk penyelesaian dan selepas lebih setahun mereka merekodkan penghakiman persetujuan. Dalam tempoh rundingan, peguam perayu telah menghadiri 11 pengurusan kes perkara tersebut di mahkamah. Perayu menyerahkan bil kos berjumlah RM13,684.60 bagi membela responden dan menyampaikannya kepada pemberi insurans untuk pembayaran. Pemberi insurans menyelesaikan bil tanpa bantahan dan kemudian menghantar bil tersebut kepada responden untuk pembayaran balik memandangkan di bawah sijil insurans responden perlu menanggung kesemua kos sehingga had RM50,000 sebelum tanggungjawab pemberi insurans untuk membayar balik kerugian responden di bawah polisi tersebut timbul. Responden enggan membayar balik jumlah bil atas alasan bahawa ia adalah 'berlebihan, terlalu tinggi dan tidak munasabah'. Selepas hampir setahun menerima bil tersebut, responden memohon kepada Mahkamah Tinggi untuk penetapan bil tersebut di bawah s 126 Akta Profesion Undang-Undang 1976 ('APU'). Mahkamah Tinggi membenarkan permohonan dengan memutuskan bahawa walaupun di bawah s 126 perintah untuk penetapan perlu diperolehi dalam tempoh enam bulan selepas penyampaian bil, responden telah menunjukkan keadaan khas untuk pelanjutan masa, iaitu: (a) bil adalah untuk jumlah sekaligus dan tidak

menyatakan sebarang butiran; dan (b) jumlah bil adalah berlebihan dan tidak munasabah. Dalam rayuan semasa, perayu berpendapat bahawa Mahkamah Tinggi terkhilaf dalam membenarkan penetapan bil tersebut kerana: (i) responden tidak mempunyai hak untuk membuat petisyen untuk penetapan kerana ia adalah pemberi insurans, dan bukannya responden, yang melantik perayu dan oleh itu pemberi insurans adalah pihak 'yang kena dipertanggungkan' di bawah s 126 APU; (ii) permohonan untuk menetapkan bil tersebut, dalam apa jua keadaan, dihalang oleh had masa di bawah s 128 APU; dan (iii) tiada keadaan khas yang ditunjukkan mengapa pelanjutan masa harus diberikan untuk penetapan bil tersebut.

Diputuskan, membenarkan rayuan dan mengetepikan keputusan Mahkamah Tinggi:

(1) Walaupun pemberi insurans adalah pihak yang 'kena dipertanggungkan' dengan bil kos di bawah s 126 APU — memandangkan ia adalah pihak yang melantik dan memberi arahan kepada perayu — responden adalah pihak yang 'bertanggungan membayar kos' kepada pihak yang boleh kena dipertanggungkan dalam s 126 dan oleh itu responden berhak untuk membuat petisyen supaya bil tersebut dikenakan penetapan. Di bawah sijil insurans, pemberi insurans hanya bertanggungan untuk membayar balik responden untuk kerugian selepas had 'Base Excess' sebanyak RM50,000 telah digunakan. Memandangkan jumlah bil adalah jauh di bawah had tersebut, responden bertanggungan untuk membayar balik pemberi insurans jumlah RM13,684.60 yang telah dibayar kepada perayu (lihat perenggan 8–9).

(2) Di bawah s 126 APU, perintah untuk penetapan kos harus 'diperolehi' dalam tempoh enam bulan selepas penyampaian bil kos oleh pihak yang kena dipertanggungkan atau oleh mana-mana orang yang bertanggungkan membayar kos tersebut. Peguam Wong dalam firma perayu menyampaikan bil kosnya kepada pemberi insurans pada 19 Disember 2017. Pemberi insurans memajukan bil tersebut kepada responden pada 30 Januari 2018. Responden memohon untuk penetapan bil hanya pada 12 Disember 2018. Oleh itu berlaku kelewatan enam bulan. Tempoh had masa dalam s 126 bermula dari masa bil dihantar kepada pemberi insurans pada 19 Disember 2017 kerana di bawah s 126 peguamcara hanya diwajibkan untuk menyampaikan bil kepada pihak yang 'kena dipertanggungkan', iaitu, pemberi insurans. Tiada rujukan kepada 'penyampaian' bil daripada pihak yang kena dipertanggungkan kepada pihak yang 'bertanggungan membayar kos' (responden); mahupun sebarang ketetapan bahawa tempoh had masa hanya bermula dari masa bil kos diterima oleh pihak yang bertanggungan membayar kos. Sama ada tempoh had masa bermula dari masa pemberi insurans menuntut bayaran daripada responden (seperti yang dihujahkan oleh responden) atau dari masa bil kos disampaikan oleh

peguamcara kepada pemberi insurans, terdapat kelewatan dalam memohon perintah untuk penetapan (lihat perenggan 13 & 16–18).

(3) Ini bukanlah kes di mana jumlah fee sekaligus diminta tanpa butiran atau penjelasan. Penjelasan dan butiran diberikan dalam bil kos — dalam 'Jadual Kerja Selesai' di bahagian bawah bil — yang tidak dipertimbangkan oleh hakim Mahkamah Tinggi. Jumlah bil tidaklah tidak munasabah, terlalu tinggi atau terlalu menindas. Walaupun tindakan tersebut menunggu penyelesaian selama lebih setahun, peguam perayu terpaksa menghadiri 11 pengurusan kes pendengaran pada masa tersebut. Oleh itu, hanya kerana perayu diminta oleh responden untuk 'stand down' sementara menunggu keputusan rundingan penyelesaian, cadangan bahawa tiada kerja perundangan perlu dilakukan adalah tidak boleh dipertahankan (lihat perenggan 27–28).

(4) Hakim Mahkamah Tinggi telah gagal mempertimbangkan emel responden yang memberikan arahan kepada perayu untuk tidak menyelesaikan perkara tersebut melainkan kos RM30,000 telah dibayar oleh defendan dalam tuntutan sivil berkenaan. Memandangkan responden telah menganggap RM30,000 sebagai kos munasabah pihak-dan-pihak bagi membela tindakan pihak ketiga — dan kos tersebut secara amnya lebih rendah daripada kos peguamcara-anakguam — adalah sukar untuk menerima penghujahan responden selanjutnya bahawa bil peguamcara-anakguam perayu sebanyak RM13,648.60 adalah terlalu tinggi dan keterlaluan dalam tindakan yang melibatkan jumlah RM1,116,754.80 (lihat perenggan 29).

(5) Responden telah melanggar had tempoh enam bulan dalam mendapatkan perintah penetapan dan Mahkamah Tinggi terkhilaf apabila dalam dapatan bahawa responden telah menunjukkan 'keadaan khas' di bawah s 128 APU untuk pelanjutan masa untuk penetapan bil tersebut (lihat perenggan 30).]

Cases referred to

Phuah Choon Hwang & Ors. v Hassan & Kong Yeam [1986] CLJ Rep 579, HC (refd)

Storer & Co Ltd v Johnson and Weatherall (1890) 15 App Cas 203, HC (refd)

Tan Tek Sin & Anor v Tetuan Nora Hayati & Assoc (sued as a firm) [2015] 2 MLJ 1; [2015] 1 CLJ 89, CA (refd)

Legislation referred to

Legal Profession Act 1976 ss 126, 126(1), 128, 128(1)
Rules of Court 2012

Appeal from: Originating Summons No WA-17D-26–12 of 2018 (High Court, Kuala Lumpur)

Lim Kian Leong (Jessica Chong Een Ming with him) (Lim Kian Leong & Co) for the appellant.
Harpal Singh Grewal (Reny Rao and Ong Keh Keong with him) (Ong Partnership) for the respondent.

Ravinthran JCA:

INTRODUCTION

[1] This is an appeal against the decision of the High Court that allowed the respondent's application to tax a solicitor's bill under s 126 of the Legal Profession Act 1976 ('the LPA').

BRIEF BACKGROUND FACTS

[2] The respondent is a law firm. It was made a third party by its former client, ie Brightdale Sdn Bhd in a civil suit filed in the Shah Alam High Court in June of 2015. The respondent notified its insurer, Pacific & Orient Insurance who is also the insurer for all lawyers under the Bar Council's Professional Insurance Indemnity Scheme. The insurer appointed Mr Leong Wai Hong of Messrs Skrine to act for the respondent. Subsequently, Mr Leong Wai Hong discharged himself and a fee of RM5,000 was paid to Messrs Skrine. By August of 2016, parties in the legal suit were attempting the settle the dispute. On 16 August 2016, the insurer appointed Mr Wong Hok Mun of Messrs Azim, Tunku Farik & Wong who are the appellant herein to represent the respondent in the matter that was pending settlement. But in an email dated 21 October 2016, the respondent informed appellant about the settlement effort and requested Mr Wong Hok Mun to 'stand down' until there is clear indication that the matter is going to trial.

[3] The settlement negotiations eventually bore fruit and the consent judgment between all parties was recorded on 2 February 2018. Before the settlement was concluded, the insurer forwarded Messrs Azim, Tunku Farik & Wong's bill in the sum of RM13,684.60 to the respondent. On the same day, the respondent replied to the insurer to say that the bill was excessive, exorbitant and unreasonable. Attempts to settle the matter between appellant and respondent failed. The insurer demanded payment of the bill via email dated 12 June 2018. The respondent brought the matter to the Bar Council Professional Indemnity Insurance Committee and a meeting was held between all parties. The plaintiff was informed by the said committee on 27 September 2018 that they were at liberty to tax the bill if they wished. The plaintiff also requested for a detailed bill but was informed by the committee that the request was declined by Mr Wong Hok Mun.

[4] The appellant filed the instant originating summons to tax the bill under s 126 of the LPA. The learned High Court allowed the application and hence this appeal by the appellant. The reasons given by the learned High Court judge may be summarised as follows:

(a) the respondent is liable to pay the fees although the party chargeable under the insurance contract is the insurer;

(b) it follows that the appellant has as a right to tax the bill of costs;

(c) although the six-month period had expired, there were special circumstances; and

(d) the reason is that the bill gave no details and that it was excessive and unreasonable.

ISSUES

[5] Having regard to the submissions of the parties, the issues that arise in this appeal are;

(a) privity of contract;

(b) whether application to tax was time-barred? and

(c) whether special circumstances exist?

PRIVITY OF CONTRACT

[6] Whether the respondent has the right to tax the bill of costs is a major point of contention between the parties. Although, taxation of costs between opposing parties for court ordered costs has been done away with in the Rules of Court 2012, under the LPA, a disputed bill of costs issued by an advocate and solicitor may be taxed upon the application of the party chargeable or a party liable to pay. Section 126 provides as follows:

> 126 An order for taxation of costs to be made within 6 months of delivery of bill of costs
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> (1) An order for the taxation of a bill of costs delivered by any advocate and solicitor may be obtained by a petition as a matter of course by the party chargeable therewith, or by any person liable to pay the cost either to the party chargeable or to the advocate and solicitor, at any time within six months from the delivery of the bill, or, by the advocate and solicitor after the expiration of one calendar month, and within a year from, the delivery.
>
> (2) The order shall contain such directions and conditions as the court thinks proper, and any party aggrieved by any order of Court may apply by summons in chambers that the same may be amended or varied or set aside.

(3) In any case where an advocate and solicitor and his client consent to taxation of a solicitor's bill the Registrar may proceed to tax the bill notwithstanding that there is no order therefor.

[7] The argument of the appellant is that they were appointed by the insurer through their insurance consultant to act for the respondent in the civil suit under the terms of the 2015 certificate of insurance which is part of the Bar Council Professional Indemnity Insurance master policy that was entered into by the latter. Therefore, the party 'chargeable' within the meaning of s 126 of the LPA was the insurer and not the respondent. The bill was paid by the insurer without any objection as they found it to be reasonable.

[8] In our view, the respondent is clearly a party that 'is liable to pay the costs' within the meaning of s 126 and is therefore entitled to present a petition to tax the bill of costs. Our reasons are as follows. Section 126(1) is worded quite widely to bring the respondent within its ambit. In listing those who can avail the taxation avenue, it firstly refers to a 'party chargeable'. Under the terms of the legal retainer, there should be no dispute that the insurer is the party chargeable. It was the insurer who instructed the appellant. The insurer has not taken issue with the bill and has paid it. But s 126(1) also refers to 'any person liable to pay the cost either to the party chargeable or to the advocate and solicitor'. Again, there is no dispute that the insurer, having paid the bill submitted by the appellant, has claimed the same from the respondent. The respondent is liable to pay the insurer (the party chargeable) for the following reason.

[9] Under the 2015 certificate of insurance and master policy, insurer is only obliged to indemnify the respondent for a loss after the limit of the 'Base Excess' of RM50,000 is exhausted. What this means is that the respondent is obliged to pay the insurer for any expense incurred up to the limit of RM50,000 before the indemnity claim under the policy can arise. Since, the bill is well below the said limit, the respondent was obliged to reimburse the insurer the sum of RM13,684.60 that was paid to the appellant. Therefore, it is our view that 'a person liable to pay costs' under s 126(1) would necessarily include the respondent although the legal retainer is between the appellant and the insurer. In view of the statutory right given to 'a person liable to pay costs' under s 126(1) to tax the bill, we find that the authorities on the issue of privity of contract cited by counsel for the appellant to be irrelevant.

[10] It must also be mentioned here that in relation to the base excess, counsel for the appellant raised another issue which he said disentitled the respondent from challenging the bill of costs. Clauses 7, 8 and 9 of the certificate of insurance which provides for the base excess fee read as follows:

7. Our liability under this insurance shall only apply to that part of any one claim which exceeds the Base Excess specified in Item 9 of the Schedule. The Base Excess shall be borne by you uninsured and at your own risk.

8. Our liability under this insurance shall only apply to that part of the defence costs on account of any one claim which exceeds the Base Excess specified in Item 9 of the Schedule. Provided however, that the Base Excess shall only be applied once in the event the claim and/or defence costs are incurred.

9. Where defence costs are payable, you must pay the amount of the Base Excess specified in Item 9 of the Schedule within 45 days of the receipt of the invoice. This payment is condition precedent to your right to renew your insurance under the Master Policy for subsequent policy periods.

[11] Counsel for the appellant submitted that the insurer 'out of good will' chose not to claim the 'entire base excess amount' but only a small portion and therefore the respondent has no right to challenge the bill of costs by applying for it to be taxed. The relevant paragraphs of the written submission read as follows:

20. As a matter of contract where defence costs are payable the insurers are contractually entitled to claim the entire amount of the Base Excess specified within 45 days of the receipt of invoice. For the Respondent and his firm, the balance of the Base Excess amounts to RM45,000. This is clearly laid out in Clauses 8 and 9 of the 2015 COI.

21. However, in the case out of good will, the insurers chose not to claim the entire Base Excess amount but instead, only requested payment from the Respondent up to the amount of the actual Defence costs incurred by them. This was a fee that was payable within agreed scale and in the Insurer's opinion, a reasonable amount for the work rendered.

[12] In short, counsel for appellant's view is that regardless of the actual legal costs or other expenses incurred by the insurer for the defence of an insured solicitor, the insurer has a right to claim up to the maximum limit of the base excess which in this case is RM50,000 or the balance of the base excess. We do not think that this proposition is supported by any clause of the insurance policy. Clauses 7, 8 and 9 only say that the liability of the insurer would extend to an indemnity claim that is in excess of the base excess which in this case is RM50,000. The said clauses do not say that regardless of whether an expense is incurred or not, the insured is obliged to pay the insurer the sum of RM50,000. In fact, the proviso to cl 8 refers to the event of 'the claim and/or defence costs' that 'are incurred'. To our mind, the fact that the policy speaks of 'costs' of the insurer that are 'incurred' militates against any suggestion that the amount stipulated as the base excess fee is a compulsory payment. The legal expense must be incurred in the first place by the insurer. A purposive reading of the said three clauses leads us to conclude that the base excess of RM50,000 is merely the upper limit of the expense that must be reimbursed by the insured

to the insurer if it is incurred. Therefore, it is not correct to say that the insurer had 'out of goodwill' asked the respondent to reimburse only the sum of RM13,684.60 stated in the bill of costs instead of asking the balance of the base excess of RM50,000. Surely, the insurer cannot ask the respondent to pay for expenses which were never incurred and enjoy a windfall. Therefore, we see no merit in this point.

WHETHER APPLICATION TIME-BARRED?

[13] Section 126 provides a limitation period. It enacts that an order for taxation of costs must be obtained within six months of delivery of the bill of costs by the party chargeable or by any person liable to pay the costs. Mr Wong Hok Mun of the appellant delivered his bill of costs dated 19 December 2017 to the insurer for payment. The said bill was forwarded by the insurer to the respondent on 30 January 2018. On the same day, the respondent replied to the insurer about their objection to the bill on the ground that it is excessive, exorbitant and unreasonable. As we stated earlier, attempts to settle the dispute between the appellant and the respondent failed. The instant originating summons to apply for an order to tax the bill was only filed on 12 December 2018.

[14] We shall firstly determine the period of the delay in this case as it appears that parties are not on common ground on this issue. Counsel for the respondent argued before us that the delay is only one day. He appeared to have taken the same position before the High Court. In para [19] of the part of the judgment where special circumstances were considered, the learned High Court judge referred to the argument of the respondent. It is as follows:

> [19] On this issue, the plaintiff contended that the bill was forwarded to the plaintiff vide letter dated 12 June 2018 and the originating summons was filed on 12 December 2018. This, the plaintiff submitted is within the six months period from the date the plaintiff received the bill.

[15] However, in para 10 of the respondent's own affidavit in support, it is stated that the insured had informed them in January of 2018 about the bill that was issued on 19 Devember 2017 by the appellant. The learned High Court judge was mindful that the insurer had notified the respondent about the bill in January of 2018 by email. His Lordship said as follows in para 2(ix) of his judgment:

> Before parties agree to the settlement, the insurer, by email dated 30 January 2018 forwarded Mr Wong's bill dated 19 December 2017 for the sum of RM13,694.60, to the plaintiff.

[16] The application to tax the bill was filed on 12 December 2018. In the premises, there was a delay of six months. Counsel for respondent's argument

is that time only ran when the insurer demanded payment from the respondent on 12 June 2018. Even if that argument is accepted, there was still a delay and it was not a delay of only one day as contended by counsel for respondents. This because s 126 does not merely say that an application for taxation should be made within six months of delivery of the bill of costs. Instead it says that 'an order for taxation' of the bill 'may be obtained' within six months of the delivery of the bill. Section 128(1) also says that no order for taxation can be made six months after delivery of the bill of costs. Therefore, not only the application to tax must be made before the expiry of six months but the order to tax must also be obtained within the said six-month period. Thus, even if time ran from 12 June 2018, the respondent was late because the order for taxation cannot obtained immediately as the application must be served on any aggrieved party.

[17] However, in our view, the limitation period in s 126 ran from the time the bill of costs was delivered to the insurer on 19 December 2017 by Mr Wong Hok Mun of the appellant law firm. Our reasons are as follows. Section 126(1) which provides for the limitation period, refers to a 'Bill of Costs delivered by any advocate and solicitor'. It also says that the order for taxation may be obtained within six months from the 'delivery of the bill'. In the instant case, the advocate in question is Mr Wong Hok Mun. It is not disputed that he delivered the bill of costs to the insurer on 19 December 2017. It is also not disputed that the party chargeable is the insurer and therefore Mr Wong Hok Mun was only obliged to deliver the bill of costs to the insurer. Section 126(1) only refers to 'delivery' of the bill of cost by the advocate in question. There is no reference to further 'delivery' of the bill of costs from the 'party chargeable' (the insurer) to a party 'liable' (the respondent) to pay the costs. There is also no stipulation that the limitation period only runs from the time when a bill of costs is received by a party liable to pay costs. As we noted earlier, in any event, in this case the insurer notified the respondent about the bill of costs in December of 2017 but no action was taken to tax the same until the end of 2018.

[18] Thus, whether the limitation period commenced from the time the demand notice was sent by the insurer as contended by the respondent or from the time the bill of costs was delivered by the advocate to the insurer, there was a delay in moving the court to obtain an order for taxation.

SPECIAL CIRCUMSTANCES

[19] Next, we shall consider whether the learned High Court correctly found that special circumstances were present in this case which can override the limitation period imposed by s 126. Section 128 allows the court to disregard the limitation period if certain conditions are met. The provision reads as

follows:

> 128 Order for taxation of advocate and solicitor's bill on notice given
>
> (1) After the expiration of six months from the delivery of a bill of costs, or after payment of the bill of costs, no order shall be made for taxation of a solicitor's bill of costs, except upon notice to the advocates and solicitors and under special circumstances to be proved to the satisfaction of the Court.
>
> (2) No such order for taxation shall in any event be made after the expiry of one year from the delivery of the bill of costs.

[20] Three conditions are stipulated in s 128 to tax a bill outside the six-month limitation period:

(a) notice to the advocate;

(b) special circumstances proved to the satisfaction of the court; and

(c) the order for taxation must be made within one year of the delivery of the bill of costs.

[21] The appellant has not taken issue that no notice was given. The respondent had objected to the bill from the time they had notice of it in January of 2018 and had duly served the application to tax the bill on the appellant.

[22] In respect of special circumstances, the learned High Court judge gave two reasons, ie that the bill was not itemised and that the costs was excessive. His Lordships reasons are found in the following paragraphs:

> [23] In the present case, the said bill dated 19 December 2017 to the Insurer only states in lump sum the professional charges in the sum of RM12,720. It was not itemised in detail particulars and it costs.
>
> [24] This itself a special circumstance and the defendant only attended case managements before consent judgment was recorded.
>
> [25] I have also considered the schedule of workdone stated in the said bill and find that the total amount of RM13,694.60 is excessive and unreasonable.

[23] The authorities relied on by His Lordship are the Court of Appeal case of *Tan Tek Sin & Anor v Tetuan Nora Hayati & Assoc (sued as a firm)* [2015] 2 MLJ 1; [2015] 1 CLJ 89 and the High Court case of *Phuah Choon Hwang & Ors. v Hassan & Kong Yeam* [1986] CLJ Rep 579. Before us, counsel for respondent relied on the same cases to support his argument that special circumstances are present in this case. Our careful reading of the two cases leads us to conclude that the said cases did not deal with the issue of 'special circumstances' under s 128. In both cases, more than one year lapsed by the

time the application for an order to tax the solicitors' bill was made. Section 128(1) enacts that no order for taxation shall in any event be made after the expiry of one year from the delivery of the bill of costs. This stipulation was acknowledged by Azahar Mohamed JCA (as His Lordship then was) in *Tan Tek Sin & Anor v Tetuan Nora Hayati & Assoc* in the following passage:

> [26] Undeniably s 128 of the LPA prescribes a time limit for an aggrieved party to refer a bill of costs for taxation and in particular provides that such I order for taxation shall not in any event be made after the expiry of one year from the delivery of the bill of costs. There is indeed no provision under the LPA that specifically provides for extension or enlargement of time to file an application for taxation of a bill of costs, after one year from its delivery to the aggrieved party.

[24] Nonetheless, His Lordship invoked the inherent jurisdiction of the court to extend time. One of the cases cited by His Lordship was the case of *Phuah Choon Hwang & Ors v Hassan & Kong Yeam* where more than one year had elapsed by the time the application to tax was made. In that case, Mohamed Dzaiddin J (later Chief Justice) cited *Storer & Co Ltd v Johnson and Weatherall* (1890) 15 App Cas 203 to say that:

> ... as for the inherent jurisdiction of the court, the authorities show that it is exercised independent of the statute.

[25] In *Phuah Choon Hwang & Ors v Hassan & Kong Yeam*, the legal work related to distribution of estate of a deceased person. The solicitor in question issued two bills of costs to deduct RM40,540.75 and RM11,768 from the sum of RM600,000 which was held in trust for the beneficiaries. In *Tan Tek Sin & Anor v Tetuan Nora Hayati & Assoc*, the legal bill to obtain a Letter of Administration was RM600,000. The bill was a lump sum bill which was bereft of details. Azahar Mohamed JCA said that the fee of RM600,000 was arguably excessive and did not commensurate with the work done. His Lordship also opined that the inherent jurisdiction of the court was invoked in the case of *Phuah Choon Hwang & Ors v Hassan & Kong Yeam* by Mohamed Dzaiddin J because the bill was 'oppressively excessive'.

[26] Thus, in both cases, inherent jurisdiction was invoked to extend time because of the grossly excessive bill for non-contentious and uncomplicated work. In the instant case, from our reading of the judgment, the learned High Court judge did not invoke inherent jurisdiction. Before us as well, counsel for respondent did not argue that inherent jurisdiction should be invoked independently of s 128 of the LPA as in the above-mentioned cases to extend time. Inherent jurisdiction was not pleaded in the originating summons or the affidavit in support either. The sole issue before the learned High Court judge in relation to extension of time was whether the respondent had demonstrated special circumstances under s 128 of the LPA.

[27] We shall consider now whether the two reasons given by the learned High Court judge constitute special circumstances under s 128(1) to extend time. We are mindful that 'special circumstances' is not defined in s 128. But, we should think that an extraordinarily good reason must be furnished to the court to extend time. The learned High Court judge said that the professional charges of RM12,720 (inclusive of GST) was not itemised with details. In our view, this is not a case where a large lump fee was issued without any details or explanation. An explaination and details were given in the bill of costs that were not considered by the learned High Court judge. At the bottom of the bill there is a 'Schedule of Workdone'. It reads as follows:

> *SCHEDULE OF WORKDONE*
>
> Taking your instructions to act; perusing relevant documents; liaising with the partner of Ong Partnership; liaising with Messrs K S Su & Mah; perusing plaintiff's claim, liaising with Messrs Chiang Chambers, perusing the Plaintiffs and Defendants' documents; preparing and filing Notice of Change of Solicitors, attending to the service of documents; attending case managements on 27.10.2016, 9.12.2016, 17.01.2017, 13.3.2017, 22.3.2017, 26.4.2017, 13.6.2017, 1.8.2017, 6.9.2017, 27.10.2017, 7.12.2017; attending to telephone calls, attending to emails, faxes, postages; inclusive of other incidental work related to the above matter not specifically mentioned herein.
>
> Fees: RM12,000.00
>
> .....
>
> AZIM TUNKU FARIK & WONG

[28] Even if the cases of *Tan Tek Sin & Anor v Tetuan Nora Hayati & Assoc* and *Phuah Choon Hwang & Ors v Hassan & Kong Yeam* are taken as a guide although in those cases the inherent jurisdiction of the court was invoked, we are also of the view that the said bill of costs in the instant case cannot be said to be unreasonable, exorbitant or 'oppressively excessive'. Considering all the circumstances, the bill in the instant case was nowhere the near the scale of the bills in those two cases. It is granted that the respondent had taken the trouble to tell the appellant that the suit in question was pending settlement. Nonetheless, the negotiations were protracted and the appellant had to attend eleven case management hearings. It goes without saying that it is expected that counsel who attends case management hearings or mentions should fully apprise himself of the facts and issues of a case in anticipation of assisting the court in the event there are queries. Otherwise, counsel would fail in his duty as an officer of the court. Therefore, merely because a 'stand down' was indicated by the respondent, the suggestion that no legal work is required to be done is not tenable. The matter was pending settlement for over a year and eleven case management hearings required attendance by counsel. Otherwise, a solicitor's clerk could attend these case management hearings.

[29] Another point that was not taken into consideration by the learned High Court judge is that the appellant exhibited an email from the respondent in which the appellant was instructed not to settle the matter unless costs of RM30,000 was paid by the defendant in the civil suit in question. Unfortunately for the respondent, the court recorded consent judgment between all parties without ordering any costs in their favour. But the point to note is that the respondent had thought at that time that costs of RM30,000 was reasonable for defending the third-party action. The sum of RM30,000 suggested by the respondent was for court ordered costs which is generally lower than solicitor and client costs. Therefore, we find considerable difficulty in accepting the later argument of the respondent that the legal bill of RM13,648.60 was exorbitant and excessive. Furthermore, the suit in which the respondent was made a third party involved the sum of RM1,116,754.80. Thus, the two reasons considered by the learned High Court judge cannot constitute special circumstances.

CONCLUSION

[30] For all the above reasons, we find the respondent had breached six-month limitation period in obtaining the order for taxation. We also find that the learned High Court judge erred in finding that the said two reasons given by the respondent constituted 'special circumstances' under s 128 to extend time to tax the bill of costs. In the premises, we allowed the appeal and set aside the order of the High Court. The respondent is ordered to pay costs of RM5,000 which shall be subject to allocatur fee.

Appeal allowed and High Court's decision set aside.

Reported by Ashok Kumar